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INTERSTATE COMMERCE COMMISSION

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CONDITIONAL SALE AGREEMENT

Dated as of December 1, 1975

between

AMERICAN SECURITY AND TRUST COMPANY, N.A.  
as Trustee under an Owner Trust Agreement  
dated as of the date hereof with

CHEMICAL BANK  
and INTERNATIONAL PAPER LEASING CORPORATION

and

PACCAR INC

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CONDITIONAL SALE AGREEMENT dated as of December 1, 1975, between the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof) and AMERICAN SECURITY AND TRUST COMPANY, N.A., acting as Trustee under an Owner Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with Chemical Bank and International Paper Leasing Corporation (said trust company, so acting, being hereinafter called the Vendee and said corporations being hereinafter called the Beneficiaries).

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS the Vendee is entering into a lease dated as of the date hereof with WCTU Railway Company (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS First Security Bank of Utah, N.A. (hereinafter sometimes called the Assignee), is acting as agent for certain investors pursuant to the Participation Agreement dated as of December 1, 1975 (hereinafter called the Participation Agreement), among the Assignee, the Vendee, the Beneficiaries, the Lessee, the Guarantor (as hereinafter defined), ITEL Leasing Corporation and the parties named in Schedule A thereto;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee, as agent (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, certain right, title and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto, and the Lessee shall consent thereto pursuant to a Lessee's Consent and Agreement in the form attached to Annex D (hereinafter called the Consent).

In addition, the Lessee proposes to enter into a Lessee's Consent and Agreement dated as of the date hereof, substantially in the form attached to Annex D hereto (hereinafter called the Consent), and Union Tank Car Company (hereinafter called the Guarantor), the owner of all the outstanding capital stock of the Lessee, proposes to enter into a Guaranty Agreement dated as of the date hereof (hereinafter called the Guaranty) with the Vendee, substantially in the form of Annex E hereto.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of

completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit (except to the extent, if any, referred to in Annex A hereto) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act; and provided, further, that the Builder shall have no obligation to deliver any unit of the Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or clause D or E of § 10 of the Lease or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Vendee or the Assignee (a) of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) that any of the conditions contained in Paragraph 5 or 6 of the Participation Agreement have not been met.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the last sentence of the first paragraph of this Article 3 and any Equipment not delivered and accepted hereunder on or prior to June 30, 1976, shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Pursuant to the Participation Agreement, the Lessee has agreed to purchase such excluded Equipment from the Builder as provided in Paragraph 1 of the Participation Agreement.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its obligations referred to in Article 13 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its obligations referred to in Article 13 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee as set forth in the builder's invoice or invoices delivered to the Vendee and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accom-

panied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee (such invoice or invoices being hereinafter called the Invoices); provided, however, that the Purchase Price of all the Units shall not exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date (not later than June 30, 1976, such date being herein called the Cut-Off Date), occurring not more than ten business days following presentation by the Builder to the Vendee of the Invoices and of the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Salt Lake City, Utah, or Chicago, Illinois, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor in immediately available funds at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

- (a) on the Closing Date with respect to each Group
  - (i) an amount equal to 33.17323% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) 66.82677% of the Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the Maximum Conditional Sale Indebtedness specified in Item 6 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 36 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each March 15 and September 15, commencing March 15, 1977, to and including September 15, 1994 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness from time to time outstanding shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 9.15% per annum. Such interest shall be payable, to the extent accrued, on September 15, 1976, and on each Payment Date thereafter. The instalments of principal payable on each Payment Date shall be calculated on such a basis that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto. The Vendee will furnish to the Vendor and the Lessee promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 10.15% per annum.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, it is understood and agreed by the Vendor that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or the Guaranty in so far as it relates to the Guarantor or of any of the Lessee's or the Guarantor's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee or the Guarantor of any of their respective agreements, representations, indemnities, obligations or other undertakings under the Lease or the Guaranty; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment, to the Vendor's rights under the Lease against the Lessee and the Equipment and to the Vendor's rights under the Consent against the Lessee and to the Vendor's rights as assignee of the Guaranty. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental (other than the payments owing the Vendee or the Beneficiaries pursuant to Sections 6, 7 [with respect to public liability insurance], 9 and 16 of the Lease [but in the case of rentals, only the amount of the increase therein], which payments shall be made directly to the Vendee or the Beneficiaries as the case may be) and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid



for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease or the Guaranty which have been assigned to the Vendor and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder or to proceed against the Lessee under the Lease or the Consent or against the Guarantor under the Guaranty (as assigned to it).

ARTICLE 5. Security Interest in the Equipment.  
The Vendor shall and hereby does retain a security interest

in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment, (c) deliver its original copy of the Lease to the Vendee and (d) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net

income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith (after written notice to the Vendor) and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, materially adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good order, repair and condition.

In the event that at any time during the original or any extended term of this Lease any unit of the Equipment shall be worn out, lost, stolen, destroyed, or, in the

reasonable opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation by the United States Government for a stated period which shall exceed the then remaining term of the Lease or for an indefinite period, but only when such indefinite period shall exceed the term of the Lease, or by any foreign governmental entity resulting in loss of possession by the Lessee for a period of 180 consecutive days, or if, in the event of a change subsequent to September 15, 1984, in any law or rules referred to in Article 10 hereof, it would be economically impractical in the opinion of the Lessee to conform thereto with respect to the Equipment (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding September 15 for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor in immediately available funds a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued on such portion but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of the Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

If the Vendor shall receive any insurance proceeds or condemnation or other similar payments in respect of units suffering a Casualty Occurrence (including, without limitation, any payments made by the handling railroad or any other third party which may be required to pay all or a portion of any loss arising from such Casualty Occurrence), the Vendor shall, after receipt of payments from the Vendee in respect of the Casualty Value thereof, pay such insurance proceeds or condemnation or other similar payments to the Vendee. All insurance proceeds or condemnation or other similar payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Reports and Inspections. On or before January 15 in each year, commencing with the year 1977, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding October 30 the amount, description and numbers of all units of Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Agreement in the case of the first such statement) and setting forth such information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the

Equipment and the Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings that may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement shall promptly be filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited. The Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates and may also be lettered, in the case of a sublease by the Lessee, in such manner as may be appropriate for convenience of identification of the subleasehold interest therein.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with

all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, materially adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee simultaneously herewith is leasing the Equipment to the Lessee for use as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor which consent shall not be unreasonably withheld.

The Vendee may also lease the Equipment to any railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and the Dominion of Canada and (iii) such lease shall be assigned to the Vendor as security

on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or the Beneficiaries or their successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interests in the Lease and the payments to be made thereunder, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, materially adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all liens, charges or security interests claimed by any party from, through or under the Vendee or the Beneficiaries or their successors or assigns, not arising out of the transactions contemplated hereby or by the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interests in the Lease and the payments to be made thereunder, equal or superior to the Vendor's security interest therein, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal



proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The agreement of the parties relating to the Build-

er's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement except as provided in the Trust Agreement. The Vendee will not enter into any amendment of or supplement to the Trust Agreement except as provided in the Trust Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6, and 13 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct; provided, however, that such manner of payment shall be consistent with the manner of payment provided in Article 4 hereof.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to

any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for fifteen days; or

(b) the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) shall, for more than 35 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a proceeding shall be commenced by or against the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency

laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) the Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(e) an Event of Default as defined in the Lease shall occur;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the term of the Lease immediately upon such notice to terminate, but without affecting the indemnities which by the provisions of the Lease survive the termination of its term, and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to

Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of the property of the Vendee, subject to the provisions of Articles 4 and 21 hereof. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

Notwithstanding the foregoing, an Event of Default under the Lease shall not be an event of default hereunder:

(i) in case the Event of Default results from non-payment of rent under the Lease if the Lessor or the Guarantor, prior to the expiration of the applicable grace period shall make such rental payment on behalf of the Lessee and there shall not have occurred an Event of Default as set forth in clause D or E of Section 10 of the Lease; or

(ii) in case the Event of Default results from any reason other than nonpayment of rent, if the Lessor or the Guarantor shall cure any such Event of Default within the grace period as provided in the Lease; or

(iii) if a Beneficiary (but not an assignee or transferee thereof) shall have assumed full personal liability for all obligations of the Vendee hereunder (notwithstanding the limitation of the Borrower's obligation contained in the last paragraph of Section 4 hereof).

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, and in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from the possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agree-

ment to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have

elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, or any other party claiming from, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor and the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has



not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof,

be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments

required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor. The parties hereto recognize that the sole filings, registrations, deposits and recordings presently required pursuant to this Article 18 are with the Interstate Commerce Commission.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Vendee, at 15th Street and Pennsylvania Avenue, N.W., Washington, D. C. 20013, Attention of Ronald Larson, Trust Officer, with copies to the Beneficiaries at the addresses provided for in the Trust Agreement, and to ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention of Contract Administration,

(b) to the Builder, at the address specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, by such assignee,

liability under Sections 1.03 and 5.01 of the Trust Agreement) on account of this Agreement or on account of any representations, covenants, undertakings or agreements of the Vendee either expressed or implied, all such personal liability, if any, being expressly waived and released by the other parties hereto; it being further understood that no liability of the Vendee or either of the Beneficiaries shall be imputed to the other said parties. The provisions of this paragraph shall inure to the benefit of any successor trustee under the Trust Agreement.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the District of Columbia; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

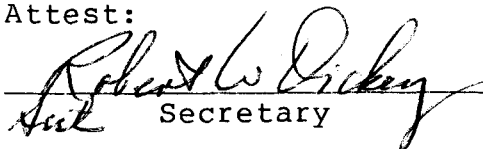
PACCAR INC,

by

 Vice President and Treasurer

[CORPORATE SEAL]

Attest:

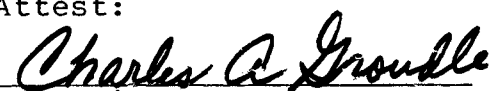
 Secretary

AMERICAN SECURITY AND TRUST COMPANY,  
N.A., as Trustee,

by   
Vice President

[SEAL]

Attest:

  
Assistant Secretary

STATE OF WASHINGTON, )

) SS. :

COUNTY OF KING, )

On this 4th day of June 1976, before me personally appeared J. J. Kelley, to me personally known, who being by me duly sworn, says that he is Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires 1/24/77

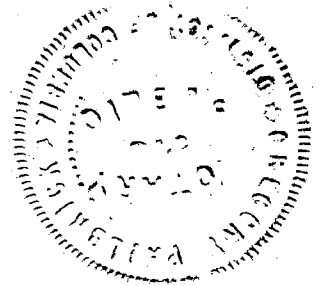
DISTRICT OF COLUMBIA, -) ss.:

On this *7<sup>th</sup>* day of *June* 1976, before me personally appeared R. D. Larson, to me personally known, who, being by me duly sworn, says that he is Vice President of AMERICAN SECURITY AND TRUST COMPANY, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

*Gregory M. Philbrick*  
Notary Public

[Notarial Seal]

My Commission expires *6-30-76*.



# SCHEDULE I

## Conditional Sale Agreement

### Allocation Schedule on Each \$1,000,000 Unit of Conditional Sale Indebtedness

<u>Date</u>	<u>Principal</u>	<u>Interest</u> <u>(9.150000%)</u>	<u>Principal</u> <u>Recovery</u>	<u>Payment</u>
9/15/76	\$ 1,000,000.00	\$ --	\$ --	\$ --
3/15/77	980,095.20	45,750.00	19,904.80	65,654.80
9/15/77	959,279.76	44,839.36	20,815.44	65,654.80
3/15/78	937,512.01	43,887.05	21,767.75	65,654.80
9/15/78	914,748.38	42,891.17	22,763.63	65,654.80
3/15/79	890,943.32	41,849.74	23,805.06	65,654.80
9/15/79	866,049.18	40,760.66	24,894.14	65,654.80
3/15/80	840,016.13	39,621.75	26,033.05	65,654.80
9/15/80	812,792.07	38,430.74	27,224.06	65,654.80
3/15/81	784,322.51	37,185.24	28,469.56	65,654.80
9/15/81	754,550.46	35,882.75	29,772.05	65,654.80
3/15/82	723,416.34	34,520.68	31,134.12	65,654.80
9/15/82	690,857.84	33,096.30	32,558.50	65,654.80
3/15/83	656,809.79	31,606.75	34,048.05	65,654.80
9/15/83	621,204.04	30,049.05	35,605.75	65,654.80
3/15/84	583,969.32	28,420.08	37,234.72	65,654.80
9/15/84	545,031.12	26,716.60	38,938.20	65,654.80
3/15/85	510,288.47	24,935.17	34,742.65	59,677.82
9/15/85	473,956.35	23,345.70	36,332.12	59,677.82
3/15/86	442,674.69	21,683.50	31,281.66	52,965.16
9/15/86	409,961.90	20,252.37	32,712.79	52,965.16
3/15/87	382,278.45	18,755.76	27,683.45	46,439.21
9/15/87	353,328.48	17,489.24	28,949.97	46,439.21
3/15/88	329,385.97	16,164.78	23,942.51	40,107.29
9/15/88	304,348.09	15,069.41	25,037.88	40,107.29
3/15/89	281,875.45	13,923.93	22,472.64	36,396.57
9/15/89	258,374.68	12,895.80	23,500.77	36,396.57
3/15/90	235,010.88	11,820.64	23,363.80	35,184.44
9/15/90	210,578.19	10,751.75	24,432.69	35,184.44
3/15/91	186,287.90	9,633.95	24,290.29	33,924.24
9/15/91	160,886.33	8,522.67	25,401.57	33,924.24
3/15/92	135,632.81	7,360.55	25,253.52	32,614.07
9/15/92	109,223.94	6,205.20	26,408.87	32,614.07
3/15/93	82,968.99	4,997.00	26,254.95	31,251.95
9/15/93	55,512.87	3,795.83	27,456.12	31,251.95
3/15/94	28,378.45	2,539.71	27,134.42	29,674.13
9/15/94	.00	1,298.31	28,378.45	29,676.76

NOTE: Principal column represents outstanding principal after payment.



Annex A

to

Conditional Sale Agreement

- Item 1: PACCAR Inc, a Delaware corporation, having an address at 1400 North 4th Street, Renton, Washington 98055. (A copy of all notices should be delivered or mailed to the attention of General Counsel, P. O. Box 1518, Bellevue, Washington 98009.)
- Item 2: The Equipment shall be settled for in not more than two Groups of units of the Equipment delivered to and accepted by the Vendee unless a greater number shall be agreed to by the parties hereto.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called this Agreement) and, except in cases of articles and materials specified by the Lessee or the Guarantor and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Lessee may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Vendee and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Vendee's rights under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or com-

mercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment, except for the patent indemnification included in Item 4 of this Annex A.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 43 shall be deemed a waiver or modification by the Vendee of any of its rights under this Item 3.

The Vendee agrees with the Builder that, so long as there has been no termination of the Lease or event of default thereunder, the obligations of the Builder to the Vendee under the foregoing warranty shall be deemed satisfied if the performance of said obligations by the Builder is satisfactory to the Lessee.

- Item 4: Except in cases of articles or materials specified by the Lessee or the Guarantor and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee or the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee, the Beneficiaries, and, as third party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Beneficiaries, the Lessee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Pursuant to the Lease, the Lessee likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments

and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee or the Guarantor and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee or the Guarantor and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder from which liability may be charged against the Lessee under the Lease and the Vendee will give notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$7,775,000.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$5,195,781.

Annex B  
to  
Conditional Sale Agreement

<u>Type and AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
50'7-1/4" 70-ton single sheath boxcar AAR Mechanical Designation, XM	PC-432 10/8/75	Renton, Washington	250	WCTR 101250- 101499	\$ 31,075	\$ 7,768,750	June 1976

Annex C  
to Conditional Sale Agreement

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LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1975

between

WCTU RAILWAY COMPANY

and

AMERICAN SECURITY AND TRUST COMPANY, N.A.  
as Trustee under an Owner Trust Agreement  
dated as of the date hereof  
with Chemical Bank and  
International Paper Leasing Corporation

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LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1975, between WCTU RAILWAY COMPANY, an Oregon corporation (hereinafter called the Lessee), and AMERICAN SECURITY AND TRUST COMPANY, N.A., acting as Trustee under an Owner Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with Chemical Bank and International Paper Leasing Corporation (said national banking association so acting being hereinafter called the Lessor, and said corporations individually and collectively being hereinafter called the Beneficiary).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with Paccar Inc, (such corporation being hereinafter called the Builder and such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interest in the Security Documentation to First Security Bank of Utah, N.A., as agent under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessor, the Lessee, the Beneficiary, the Guarantor (as hereinafter defined), ITEL Leasing Corporation and the parties named in Schedule A thereto (said bank, as so acting, being hereinafter, together with its successors and assigns, called the Vendor);

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS Union Tank Car Company, a Delaware corporation (hereinafter called the Guarantor), of which the Lessee is a wholly owned subsidiary, has agreed to guarantee to the Lessor, as provided in a guaranty agreement dated as of December 1, 1975 (hereinafter called the Guaranty), with the Lessor, the due and punctual payment of the sums payable by, and the due and punctual performance of the obligations of, the Lessee under this Lease and the Lessee's Consent and Agreement dated as of the date hereof (hereinafter

called the Consent), by the terms of which the Lessee consents to the assignment of the Lease;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor, the Builder or the Vendor; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and

acceptance of and the approval of all invoices relating to the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 37 consecutive semiannual payments payable on March 15 and September 15 in each year, commencing September 15, 1976. The rental payment payable on September 15, 1976, shall be in an amount equal to .025417% of the Purchase Price (as defined in the Security Documentation) of each Unit subject to this Lease for each day elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to and including the date of such payment. The next 36 rental payments shall each be in an amount equal to 4.3897% of the Purchase Price of each Unit then subject to this Lease. In addition, as additional rental hereunder, the Lessee agrees to pay to the Lessor on the Cut-Off Date (as defined in the Participation Agreement) and on September 15, 1976, respectively, amounts equal to the amounts required to be paid by the Lessor pursuant to the last paragraph of Paragraph 7 of the Participation Agreement.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof. If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Chicago, Illinois or Salt Lake City, Utah, are authorized or obligated to remain closed.



The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease (other than the payments owing the Lessor or the Beneficiaries pursuant to Sections 6, 7 [with respect to public liability insurance], 9 and 16 hereof [but in the case of rentals only the amount of the increase therein], which payments shall be made directly to the Lessor or the Beneficiaries, as the case may be) for the account of the Lessor in immediately available funds in care of the Vendor, at 79 South Main Street, Salt Lake City, Utah 84111, attention of Trust Department, Corporate Division, on or before 11:00 a.m., Salt Lake City time, on the date upon which such payments are due and payable. Such payments shall be accompanied by instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation, and, second, so long as no event of default or event which with the lapse of time and/ or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds in the city where such payment is to be made.

In the event that there are any losses, liabilities or expenses arising out of or resulting from the Investments made pursuant to Paragraph 2 of the Participation Agreement, including, but not limited to, any deficiency in respect thereof, the Lessor shall pay the same to the Vendor and the rentals thereafter payable by the Lessee in respect of Units settled for after such loss, liabilities, expenses or deficiencies arose shall be increased by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's net after-tax annual rate of return and Net After-Tax Total Cash Flow (as defined in § 16 hereof) (computed on the same assumptions as were utilized by the Lessor in originally evaluating this transaction) to equal the net after-tax annual rate of return and Net After-Tax Total Cash Flow (as defined in § 16 hereof) that would have been realized by the Lessor if such loss, liability or expense had not occurred.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due and paid pursuant to § 3 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit, the rights of the Lessor under this Lease and the rights of the Vendor under the Security Documentation. The Lessee will not place any such unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words that may be removed, defaced or destroyed. In the event of a change in the road number of any Unit, the Lessee will promptly (i) file a statement containing the new number or numbers being substituted with the Vendor and the Lessor and file, record and deposit such statement in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) furnish the Vendor and the Lessor an opinion of counsel to that effect and to the further effect that no further filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency thereof is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units in the United States of America. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates and may also be lettered, in the case of a sublease by the Lessee, in such manner as may be appropriate for convenience of identification of the subleasehold interest therein.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Beneficiary for collection or other charges and will be free of expense to the Lessor and the Beneficiary with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax payable by the Lessor or the Beneficiary in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Lessor or the Beneficiary have their respective principal places of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, certification fees, registration fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, certification fees, registration fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of the ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Beneficiary or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Lessor and the Beneficiary, materially adversely affect the title, property or rights of the Lessor and the Beneficiary hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof. If any imposition referred to in this paragraph 6 shall have been charged or levied against the Lessor or the Beneficiary and paid by the Lessor or the Beneficiary, the Lessee shall

reimburse the Lessor or the Beneficiary, as the case may be, on presentation of an invoice therefor with interest thereon from the date of such payment to the date of reimbursement at 10.15% per annum or at a rate (hereinafter called the Chemical Rate) equal to 125% of the Prime Rate charged by Chemical Bank to its most creditworthy corporate borrowers as from time to time in effect, whichever is greater; provided, however, that the Lessee shall not be obligated to reimburse the Lessor or the Beneficiary for any imposition so paid unless the Lessee shall have been given 30 days' written notice prior to the payment of such imposition or unless the Lessee shall have been given notice before the time limit for contesting such imposition has expired, and the Lessee shall have been given the opportunity to contest such imposition, except that any such contest shall be in good faith and by appropriate legal proceedings and the nonpayment of such imposition shall not, in the reasonable opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or the Security Documentation. The Lessor agrees that if, in the opinion of independent tax counsel selected by the Lessee and reasonably acceptable to the Lessor (and whose fees and expenses shall be paid by the Lessee), a bona fide claim exists for a refund of all or a portion of any imposition in respect of which the Lessee has made payment to the Lessor, the Lessor shall upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by said independent counsel in order to sustain such claim. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessee shall be entitled to the proceeds of the successful prosecutions to the extent that any such proceeds are not required to reimburse the Lessor for impositions paid and interest thereon as herein provided.

Notwithstanding anything to the contrary in the foregoing paragraph of this § 6, in the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by such paragraph, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interest of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor; provided, however, that the Lessor shall provide such information and assistance as may be appropriate in the circumstances.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action or failure to act by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor or the Beneficiary, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor and the Beneficiary of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor or the Beneficiary reasonably may require to permit the Lessor's and the Beneficiary's compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance; Casualty Occurrences; Insurance.  
The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition.

In the event that at any time during the original or any extended term of this Lease any Unit shall be or become worn out, lost, stolen, destroyed, or, in the reasonable opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation by the United States Government for a stated period which shall exceed the then remaining term of the Lease or for an indefinite period, but only when such indefinite period shall exceed the

term of the Lease, or by any foreign governmental entity resulting in loss of possession by the Lessee for a period of 180 consecutive days, or if, in the event of a change subsequent to September 15, 1984, in any law or rules referred to in the second paragraph of § 9 hereof, it would be economically impractical in the reasonable opinion of the Lessee to conform thereto with respect to the Units (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the September 15 next succeeding such occurrence the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below which sum includes and is in lieu of the rental payment or payments in respect of such Unit which would otherwise be due and payable on such date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit. In the event the proceeds of such sale exceed the Casualty Value of such Unit, then such excess shall initially be paid to the Lessor. Within 20 days after the Lessor's receipt of such excess proceeds, the Lessee may notify the Lessor that it desires that the Lessor submit a request to the Internal Revenue Service for a ruling to the effect that the payment to the Lessee of one-half of such excess would not result in the unavailability, loss or recapture of all or any part of the Investment Credit, the ADR Deduction, or the Interest Deduction with respect to such Unit. If the Lessee so notifies the Lessor, the Lessor shall with reasonable diligence cause such a ruling request to be submitted to the Internal Revenue Service, and the Lessee shall pay all costs reasonably incurred by the Lessor in connection with such request, including reasonable attorneys' fees. In the event that a favorable tax ruling is issued by the Internal Revenue Service, then the Lessee shall be entitled to receive one-half of the excess proceeds from the Lessor and the Lessor shall be entitled to

the balance of such proceeds. In the event that the Lessee fails to notify the Lessor within the 20-day period specified above that it desires that the Lessor request such a ruling, or in the event that such ruling is unfavorable, then the Lessor shall be entitled to all of the excess proceeds over the Casualty Value of such Unit. In the event that the Units are deemed to have suffered a Casualty Occurrence by reason of a determination by the Lessee that it would be economically impractical, in the reasonable opinion of the Lessee, to conform to a change subsequent to September 15, 1984, in any law or rules referred to in the second paragraph of § 9 hereof, then the Lessee shall not be allowed to purchase any of the Units and shall be entitled, provided that the Lessee has previously paid to the Lessor the Casualty Value of such Units, to receive the proceeds of the sale of such Units to the extent that they do not exceed the Casualty Value of such Units, and any excess proceeds shall be paid to the Lessor.

Subject to adjustment pursuant to the provisions of § 16 hereof, the Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date, as increased by the percentage set forth in the following paragraph:

<u>Date</u>	<u>Percentage of Purchase Price</u>
September 15, 1976	85.564
September 15, 1977	98.025
September 15, 1978	98.261
September 15, 1979	99.319
September 15, 1980	98.771
September 15, 1981	96.649
September 15, 1982	93.142
September 15, 1983	88.998
September 15, 1984	84.395
September 15, 1985	79.373
September 15, 1986	73.984
September 15, 1987	68.284
September 15, 1988	62.332
September 15, 1989	56.186
September 15, 1990	50.07
September 15, 1991	44.01
September 15, 1992	37.70
September 15, 1993	31.15
September 15, 1994	24.39
and thereafter	

The foregoing percentages have been computed without regard to recapture of the Investment Credit (as defined in § 16 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	25.7965
Fifth	17.1976
Seventh	8.5988

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and promptly pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 24.39% of the Purchase Price of such Unit.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

All payments received by the Lessor from any governmental entity for the use of a Unit during the term of this Lease or any renewal thereof shall be paid over to the Lessee to the extent the Lessee has paid rent for such Unit in respect of the period during which the governmental entity has taken such Unit provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor from such governmental entity for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

The Lessee will, at all times prior to the return of



the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment and, in any event, comparable in amounts and against risks insured against by the Guarantor in respect of similar equipment owned by it; provided, however, that the Lessee shall not at any time be required to maintain property insurance with respect to any Unit in an amount greater than the Casualty Value from time to time applicable to such Unit. The benefits thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear.

Except as otherwise provided in the last paragraph of this § 7, if the Lessor shall receive any net insurance proceeds as the result of insurance carried by the Lessee or any condemnation or other similar payments in respect of Units suffering a Casualty Occurrence (including, without limitation, any payments made by the handling railroad or any other third party which may be required to pay all or a portion of any loss arising from such Casualty Occurrence), the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit and to the extent such proceeds are not required to satisfy the Lessee's obligations under Section 10 hereof if an Event of Default has occurred and is continuing hereunder, pay such proceeds or condemnation or other similar payments to the Lessee up to an amount equal to the Casualty Value with respect to such Units paid by the Lessee and any balance of such proceeds or condemnation or other similar payments shall initially be retained by the Lessor. In the event the Lessor receives any such proceeds or condemnation or other similar payments in excess of the Casualty Value in respect of any Unit, then the Lessor shall promptly notify the Lessee of such receipt. Within 20 days after receipt of such notice, the Lessee may notify the Lessor that it desires that the Lessor submit a request to the Internal Revenue Service for a ruling to the effect that the payment to the Lessee of one-half of such excess would not result in the unavailability, loss or recapture of all or any part of the Investment Credit, the ADR Deduction, or the Interest Deduction with respect to such Unit. If the Lessee so notifies the Lessor, the Lessor shall with reasonable diligence cause such a ruling request to be

submitted to the Internal Revenue Service, and the Lessee shall pay all costs reasonably incurred by the Lessor in connection with such request, including reasonable attorneys' fees. In the event that a favorable ruling is issued by the Internal Revenue Service, then the Lessee shall be entitled to receive one-half of the excess proceeds from the Lessor and the Lessor shall be entitled to the balance of such proceeds. In the event that the Lessee fails to notify the Lessor within the 20-day period specified above that it desires that the Lessor request such a ruling, or in the event that such ruling is unfavorable, then the Lessor shall be entitled to all of the excess proceeds over the Casualty Value of such Unit. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which proceeds were paid has been fully repaired.

The Lessee will, upon request of the Lessor, cause to be carried and maintained in respect of the Units at the time subject hereto property insurance or public liability insurance or both in addition to such insurance as may be required to be carried and maintained by the Lessee pursuant to the preceding paragraph of this § 7 and against such risks and with such insurance carriers as the Lessor may specify in such request; provided, however, that the additional insurance coverage specified in such request is reasonably obtainable and that the Lessor shall pay all costs incurred by the Lessee in connection therewith, including, without limitation, the premiums payable with respect to such insurance. No proceeds of any such additional insurance shall be payable to the Lessee pursuant to the preceding paragraph of this § 7.

§ 8. Reports. On or before January 15 in each year, commencing with the calendar year 1977, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding October 30 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have

been preserved or replaced. The Lessor and the Vendor shall have the right, by their respective agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee will furnish to the Lessor, the Vendor, the Beneficiary and the parties named in Schedule A to the Participation Agreement (i) within 60 days after the end of each of the first three quarterly fiscal periods of the Lessee, statements of income and surplus of the Lessee and its consolidated subsidiaries, if any, as of the close of such periods (the statement of income to be in comparative form with the corresponding fiscal period in the preceding fiscal year), in reasonable detail and certified by any Vice President or the Treasurer of the Lessee, (ii) within 120 days after the close of each of the fiscal years of the Lessee, balance sheets of the Lessee and its consolidated subsidiaries, if any, as of the close of such fiscal years, together with the related statements of income and surplus and source and application of funds for such fiscal years, in comparative form with the preceding fiscal year, all in reasonable detail and certified by a recognized national firm of independent public accountants, such certification including their certificates and accompanying comments, (iii) within 120 days after the close of the fiscal year of the Lessee a certificate of the Lessee, signed by a principal financial officer, to the effect that the signer has reviewed the relevant terms of this Lease, the Participation Agreement and the Security Documentation and has made, or caused to be made under his supervision, a review of the transactions and condition of the Lessee during the preceding fiscal year, and that such review has not disclosed the existence during such period, nor does the signer have knowledge of the existence, as at the date of such certificate, of any condition or event which constitutes a default, an Event of Default or event of default or which, after notice or lapse of time or both, would constitute such a default, an Event of Default or event of default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Lessee has taken or is taking or proposes to take with respect thereto, (iv) as soon as practicable after the filing of the same, all quarterly and annual reports of the Guarantor required to be filed by it under the Securities Exchange Act of 1934, and (v) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish any person pursuant to the Security Documentation.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation, or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, with-

out limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiary, and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default by the Lessee under the Participation Agreement or an event of default or an Event of Default under the Security Documentation or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation; provided, however, that the foregoing indemnification shall not apply to any failure of payment of any of the principal of or interest on the Conditional Sale Indebtedness (as defined in the Security Documentation). The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

The Lessee agrees to prepare and deliver to the

Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements contained herein, in the Participation Agreement, in the Consent or in the Guaranty by the Lessee or the Guarantor, respectively, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee and/or the Guarantor specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Consent, or of the Guarantor under the Guaranty, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent, or of the Guarantor under the Guaranty), and unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Consent, or of the Guarantor under the Guaranty, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(i) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal, state and local income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor, subject to the applicable provisions of law, may by its agents enter upon the premises of

the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purpose whatever and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice of termination: (x) a sum equal to (A) the excess, if any, of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Units which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Units over the then present value of the rental which the Lessor reasonably estimates to be obtainable for such Units during such period, such present value to be computed in each case on the basis of a 4% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) an amount which, after deduction of all taxes required to be paid by the Beneficiary in respect of all amounts payable by the Lessee to the Lessor hereunder, under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Beneficiary, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Beneficiary as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of



this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Beneficiary, cause the Beneficiary's net after-tax annual rate of return under this Lease to be equal to the net after-tax annual rate of return that would have been available to the Beneficiary if they had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of the Units as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum which, after deduction of all taxes required to be paid by the Beneficiary in respect of all amounts payable by the Lessee to the Lessor hereunder (based on the marginal tax rate in effect for the Beneficiary at the time of such payment) will pay or reimburse the Beneficiary for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this subparagraph (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or any other user thereof to return the Unit or Units) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor, for a reasonable period not in excess of two years; and

(c) transport the same to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units for a reasonable period not in excess of two years. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

All amounts earned in respect of any of the Units after the date of termination of this Lease, whether by reason of the exercise of a remedy upon an Event of Default or otherwise, shall belong to the Lessor unless and until the Lessee shall have acquired such Unit pursuant to the terms hereof and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, or any Unit is not delivered to the Lessor within 60 days of such termination as provided in § 14, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange rate for such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to others than railroad companies for use in their business, or (b) sublet all or any of the Units, but only, in either case, upon and subject to all the terms and conditions of this Lease, and to all rights and remedies of the Vendor under the Security Documentation; provided, however, that the Lessee shall not use or permit the use of any Units in service involving the regular operation and maintenance thereof outside the United States of America or in any way inconsistent with or in violation of the representations, warranties and covenants set forth in Section 16 hereof. The Lessee may receive and retain compensation for such use from others so using any of the Units. The Lessee represents and warrants to the Lessor and the Vendor that the Units will be used, and are intended for use, in connection with interstate commerce, and it is the intention of the parties hereto that the Units will be used exclusively in the United States of America.

The Lessee hereby assigns to Lessor all of Lessee's rights in any sublease or assignment of the Units hereunder, which assignment to the Lessor is effective upon, and only upon, the occurrence of an Event of Default under this Lease. Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option; Right of First Refusal.

The Lessor intends to retain the Units for release at the expiration of the term of this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all, but not fewer than all, of the Units then covered by this Lease for one additional two-year period commencing on the scheduled expira-

the expiration of the Lease or any extended term thereof to Chicago, Illinois. Upon the expiration of the storage period specified above, the Lessee shall, at the request of the Lessor, permit the Lessor to continue to store any Unit then stored by the Lessee on the storage tracks of the Lessee designated by the Lessor, or, in the absence of such designation, on such storage tracks as the Lessee may select, for a period ending not later than 90 days following the last day of the storage period with respect to such Unit specified above. The Lessor shall pay all costs incurred by the Lessee in connection with such additional storage, and any such additional storage shall be at the risk of the Lessor. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii), except as provided in § 13 hereof, meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) be free and clear of all liens, security interests, encumbrances and rights of others except the respective rights of the Lessor hereunder and the Vendor under the Security Documentation and any liens, security interests or encumbrances created by the Lessor, the Vendor or the Beneficiary. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During the period commencing with the expiration of the term of this Lease or, if the term is extended, then the expiration of any extended term thereof, and ending with the date 90 days from such expiration, the Lessor shall be entitled to receive all rental amounts received by the Lessee with respect to any Unit which has not been returned to the Lessor in accordance with this Section 14. For any period thereafter the Lessee shall pay to the Lessor for each day until such Unit is returned to the Lessor the greater of (i) the per diem

interchange for each such Unit or (ii) the rental actually received by the Lessee for such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units and this Lease, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment hereof and thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit, and the parties recognize that the sole filings, registrations, deposits and recordings presently required pursuant to this § 15 are with the Interstate Commerce Commission.

§ 16. (a) Federal Income Taxes. It is the intent of the parties that this agreement is a lease and that (A) the Beneficiary shall be entitled to such deductions, credits and other benefits with respect to the Units as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), to an owner of tangible personal property used in such owner's trade or business including, without limitation, the ADR Deduction, the Investment Credit and the Interest Deduction, all as hereinafter defined, and (B) the Lessor and the Beneficiary shall be entitled to treat all items of income, deduction and credit with respect to the Units included under this Lease as attributable to sources within the United States.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents which would be

inconsistent with the foregoing intent or which would increase the amount of rentals required to be taken into income by the Lessor or the Beneficiary, and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of such intent. The Lessee agrees to keep and make available for inspection and copying by the Lessor, and will on written request by the Lessor provide the Lessor with such records as will enable the Lessor and the Beneficiary to verify whether they are entitled (A) to the full benefit of the ADR Deduction, the Investment Credit and the Interest Deduction and (B) to treat all items of income, deduction and credit with respect to the Units included under this Lease as attributable to sources within the United States.

The Lessee represents and warrants that (i) all the Units of Equipment constitute property the entire basis, as defined in Section 1012 of the Code, of which qualifies for the 10% Investment Credit under Section 46 of the Code; (ii) at the time the Lessor becomes the owner of the Units, such Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code, and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b)(2) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code; and (iv) none of the Units will be "used predominantly outside the United States" during any taxable year of the Lessor within the meaning of Section 48(a)(2) of the Code.

With respect to any Unit, if (A)(1) for any reason (other than the reasons set forth in subparagraphs (i) through (v), inclusive, below) prior to the receipt by the Lessor of a Ruling (as hereinafter defined), or (2) after the receipt by the Lessor of a Ruling as a direct or indirect result of (a) the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessee or the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with an application for a Ruling, (b) the adoption of an amendment, modification, addition or change in the provisions of the Code, or (c) the promulgation of any Income Tax Regulation, Revenue Procedure, Revenue Ruling or Technical Information Release or any other change in Treasury Department or Internal Revenue Service policy,

all or any part of the ADR Deduction, the Investment Credit or the Interest Deduction with respect to any Unit shall be unavailable (or having been available, shall cease to be available or be recaptured) in computing each of the items of income, gain, loss, deduction or credit of the Beneficiary or (B) the Lessor or the Beneficiary shall not be entitled to treat all items of income, deduction and credit with respect to such Unit included under this Lease as attributable to sources within the United States for any taxable year (or portion thereof) during which this Lease is in effect as the result of the location of any Unit outside the United States, then the rental applicable to such Unit set forth in § 3 shall, beginning on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased by such amount as shall be required, in the reasonable opinion of the Beneficiary, to cause the Beneficiary's Net After-Tax Total Cash Flow and net after-tax annual rate of return in respect of the Units over the term of this Lease to be the same as such Net After-Tax Total Cash Flow and net after-tax annual rate of return, respectively, would have been had the ADR Deduction, the Investment Credit and the Interest Deduction been wholly and continuously available and had the Lessor and the Beneficiary been entitled to treat all items of income, deduction and credit with respect to the Units included under this Lease as attributable to sources within the United States; provided, however, that such rental shall not be so increased to the extent that the ADR Deduction, the Investment Credit or the Interest Deduction with respect to a Unit is unavailable as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated pursuant to § 7;

(ii) a voluntary transfer by the Lessor of legal title to such Unit, a voluntary disposition by the Lessor of any interest in such Unit or a voluntary reduction by the Lessor of its interest in the rentals from such Unit under the Lease (other than as contemplated by the Security Documentation) unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Security Documentation without the prior written consent of the Lessee, which consent shall not be unreasonably withheld, if such



amendment shall be the cause of such loss; provided, however, that an Event of Default shall not have occurred and be continuing;

(iv) the failure of the Beneficiary to claim the ADR Deduction, the Investment Credit or the Interest Deduction on its Federal income tax return for the appropriate year, or to follow proper procedure in claiming the Investment Credit, the ADR Deduction or the Interest Deduction, unless prior to the latest date for making such claim, both of the following conditions have been met: (a) the Beneficiary shall have received an opinion of its outside tax counsel to the effect that the Beneficiary is not entitled to claim the ADR Deduction, the Investment Credit or the Interest Deduction, as the case may be, and (b) the Lessee has received an opinion of its outside tax counsel which concurs with such determination; or

(v) the failure of the Beneficiary to have sufficient liability for Federal income tax against which to credit the Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction for Federal income tax purposes.

For the purposes of this § 16, any outside tax counsel selected by the Beneficiary or by the Lessee must be counsel with a recognized expertise in tax matters with respect to lease transactions. If the Beneficiary shall have received an opinion of its outside tax counsel to the effect that the Beneficiary is not entitled to claim the ADR Deduction, the Investment Credit or the Interest Deduction, as the case may be, and requests that the Lessee furnish to it an opinion of its outside tax counsel with respect to the issue of whether or not the Beneficiary is entitled to claim the ADR Deduction, the Investment Credit or the Interest Deduction, as the case may be, then the Lessee shall request such opinion with reasonable diligence and promptly upon receipt of such opinion furnish a copy thereof to the Lessor.

The recomputation of the rentals payable by the Lessee pursuant to the preceding paragraphs of this § 16 will be based (i) on the same assumptions used by the Beneficiary in originally evaluating this transaction, including the assumptions that any taxable income generated by this transaction is subject to tax at an effective rate of 50.000% and

that any net loss generated by this transaction is a tax benefit against taxes imposed at an effective rate of no greater than 50.000%, and (ii) in determining the extent to which the Beneficiary receives credit for any foreign tax against its Federal income tax liability (such determination by the Beneficiary being final and conclusive), on the further assumption that credit is utilized for all other foreign taxes claimed as credits for the taxable year in question before credit is utilized for any foreign taxes indemnified hereunder which are claimed as credits for such year.

The Beneficiary agrees that if, in the opinion of its or the Lessee's outside tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the ADR Deduction, the Investment Credit or the Interest Deduction on any Unit exists in respect of which the Lessee would otherwise be required to pay to the Lessor pursuant to the preceding paragraphs of this § 16 increased rental and additional rental in respect of any interest and/or penalty, the Beneficiary shall upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by either Counsel in order to sustain such claim; provided, however, that the Beneficiary shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Beneficiary for all liabilities and expenses which may be entailed therein in a form satisfactory to the Beneficiary. The Beneficiary may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Beneficiary of all or any portion of the Investment Credit, the Interest Deduction or the ADR Deduction on any Unit (hereinafter called a Tax Payment) or may make such Tax Payment and then sue for a refund. If the Beneficiary takes such action prior to making such Tax Payment, such increased rental and additional rental need not be paid by the Lessee while such action is pending. In such case, if the final determination shall be adverse to the Beneficiary, the increased rental shall be computed by the Lessor as of the date of such final determination and the Lessee shall commence payment thereof on the rental payment date next succeeding such final determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount which, when reduced by any increase in the Lessor's or Beneficiary's income tax liability or liabilities (based on the marginal tax rate in effect for the Beneficiary at the time of such payment) resulting from the Lessor's receipt of such addi-

tional rental, will equal the amount of all interest and penalty paid by the Lessor or the Beneficiary in respect of such final determination, together with interest thereon from the date such payment is made by the Beneficiary to the date the Lessee reimburses the Lessor therefor at the Chemical Rate. If the Beneficiary makes such Tax Payment and then sues for a refund, such increased rental shall commence to be payable by the Lessee on the first rental payment date after such Tax Payment is made and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental any amount which, when reduced by any increase in the Lessor's or Beneficiary's income tax liability or liabilities (based on the marginal tax rate in effect for the Beneficiary at the time of such payment) resulting from the Lessor's receipt of such additional rental, will equal all interest and penalty paid by the Lessor or Beneficiary included in such Tax Payment. In such case, if the final determination shall be in favor of the Lessor, (a) the rental payable by the Lessee to the Lessor shall be adjusted by such amount as shall be required, in the reasonable opinion of the Beneficiary, to cause the Beneficiary's Net After-Tax Total Cash Flow and net after-tax annual rate of return with respect to the Units over the term of this Lease to be at least the same as such Net After-Tax Total Cash Flow and net after-tax annual rate of return would have been if such Tax Payment had not been made (or such adjustment shall be made proportionately if the final determination is partly in favor of and partly adverse to the Lessor) and such adjusted rental shall be payable by the Lessee beginning on the rental payment date next succeeding such final determination and thereafter (provided that under no circumstances shall the rental payable by the Lessee under this Lease be less than the amounts necessary to satisfy the obligations of the Lessor under the Security Documentation), and (b) the Lessor shall pay to the Lessee an amount which, when reduced by any net tax benefit to the Lessor resulting from the receipt and the payment of such amount, will equal the amount of any penalty or interest refunded to the Lessor as a result of such final determination and any interest on such refunded penalty and interest paid to the Lessor by the Government, reduced by any net tax incurred by the Lessor on the receipt and the payment thereof, promptly upon receipt thereof.

In the event that any payment or adjustment is required to be made pursuant to this Lease and such payment or adjustment is to be made on succeeding rental payment dates or on or before the next succeeding rental payment date, but at such time this Lease shall have been terminated or rent shall otherwise no longer be due and payable on the remaining rental payment dates, (a) the Lessee shall promptly (but in any event no more than five business days after

notice thereof) pay the Lessor an amount, if any, otherwise payable and not theretofore paid by it, equal to the incremental increase in rent which would have been required if the earlier of the final determination and the Tax Payment had occurred immediately prior to the last rental payment date on or prior to the termination of this Lease and (b) each party required to make payment shall promptly pay all amounts otherwise payable and not theretofore paid by it in respect of interest and penalty (and interest thereon).

(b) Rental Adjustment for Lessee's Additional Expenditures. If for any reason whatsoever all or any part of the cost of any improvement and/or addition to a Unit or any expenditure by the Lessee in respect of any Unit or this Lease (hereinafter called Additional Expenditures) made by the Lessee under and pursuant to the terms of this Lease or otherwise is required to be included in the gross income of the Lessor or Beneficiary for Federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals for the Units set forth in § 3 shall, beginning on the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice to the Lessor pursuant to the following sentence that such inclusion in the Lessor's or the Beneficiary's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of the Beneficiary (after taking into account any present or future tax benefits that the Beneficiary reasonably anticipates it will derive from its additional investment in the Units by reason of such inclusion, including, without limitation, any current deductions, future depreciation deductions and investment tax credit), cause the Beneficiary's Net After-Tax Total Cash Flow and net after-tax annual rate of return (calculated on the same basis as used by the Beneficiary in originally evaluating this transaction, including the assumptions set forth in subsection (a) of this Section 16) in respect of the Units over the term of this Lease to be at least the same as such Net After-Tax Total Cash Flow and net after-tax annual rate of return, respectively, would have been if the cost of such Additional Expenditures had not been includible in the Lessor's or the Beneficiary's gross income. The Lessee agrees that, within 30 days after the close of any calendar year (or, in the event the Lessor gives the Lessee written notice that the Beneficiary's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Additional Expenditures which are

required to be included in the gross income of the Lessor or Beneficiary for Federal, state or local income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Additional Expenditures in reasonable detail.

In determining the present or future tax benefits to be taken into account by the Beneficiary in establishing the rental increase required hereby, the Beneficiary shall attempt to maximize such benefits and hence minimize the increase in rents by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conventions and accounting methods as will further such objectives; provided, however, that the Beneficiary shall not be required to make any election or utilize a particular convention or accounting method if the Beneficiary determines, in its sole discretion but in good faith, that in so doing it will adversely affect its Federal income tax liability determined without regard to this transaction.

As a condition of any increase in rentals pursuant to this subsection, the Beneficiary will, upon the written request and at the sole expense of the Lessee, contest the inclusion of the cost of Additional Expenditures in its gross income in such forum as it, in its sole judgment but with due regard to the Lessee's advice, shall select; provided, however, that the Beneficiary shall not be required to contest such inclusion unless it has received an opinion from outside counsel selected by the Lessee and acceptable to the Beneficiary that there is a reasonable basis for contesting such inclusion and the Lessee has advanced to the Beneficiary such sums as the Beneficiary may reasonably deem necessary to pay the costs of such contest.

(c) Definitions. For the purposes of this § 16, the following terms shall have the meanings indicated below:

(1) "ADR Deduction" shall mean the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code, (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 72-10, 1972-1 C.B. 721, for property in Asset Guidelines Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in Section 167(m) of the Code and the Treasury Regulations

promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining-balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, or his delegate, to the sum of the years-digits method of depreciation when most beneficial to the Lessor and with a change not requiring the consent of the Commissioner of Internal Revenue, or his delegate, to the straight-line method of depreciation when most beneficial to the Lessor, (c) taking into account an estimated salvage value, after the reduction allowed by Section 167(f) of the Code, of zero, (d) including in the entire basis of the Units the entire capitalized cost thereof and all other items properly includible under Section 1012 of the Code, (e) calculated on the assumption that each Unit is first placed in service during the half of the Beneficiary's taxable year during which the closing with respect to such Unit occurs and (f) utilizing the half-year or modified half-year convention whichever is more beneficial to the Lessor.

(2) "Investment Credit" shall mean the 10% investment credit for "new section 38 property" with respect to 100% of the basis of the Units pursuant to Section 38 and related sections of the Code, including in the basis of the Units the entire capitalized cost thereof and all other items properly includible under Section 1012 of the Code, such investment credit to be available to the Beneficiary with respect to any Unit for the taxable year of the Beneficiary during which the closing with respect to such Unit occurs.

(3) "Interest Deduction" shall mean the deductions pursuant to Section 163 of the Code with respect to interest accrued or paid on the certificates of interest issued pursuant to the Participation Agreement.

(4) "Net After-Tax Total Cash Flow" shall mean an amount equal to (A) the sum of (v) all rentals payable by the Lessee under this lease plus (w) the Investment Credit; less (B) the sum of (x) all amounts payable by the Lessor in respect of the Conditional Sale Indebtedness, (y) all income tax payable by the Beneficiary in connection with this transaction and (z) all fees payable to ITEL Leasing Corporation in connection with this transaction.

(5) "Ruling" shall mean a favorable tax ruling

issued by the Internal Revenue Service to the effect that: (i) this Lease constitutes a true lease and the Beneficiary will be treated as owner of the Units; (ii) the Beneficiary is entitled to the Interest Deduction in computing its taxable income; (iii) the Beneficiary is entitled to the Investment Credit in respect of the entire basis, as defined in Section 1012 of the Code, of the Units; (iv) the Beneficiary is entitled to the ADR Deduction (without taking into account in the definition of ADR Deduction the applicable level of gross salvage value) in respect of the entire basis (as so defined) of the Units; and (v) the payments to be paid by the Lessee under this lease for the use of the Units constitute rent and are deductible by the Lessor pursuant to Section 162(a)(3) of the Code.

(d) Miscellaneous. For purposes of this § 16, the term "Beneficiary" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Beneficiary is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in § 7 shall be appropriately adjusted.

The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to this § 16 shall survive the expiration or other termination of this Lease.

For purposes of this § 16 and clause (ii) of the first paragraph of § 10 hereof, if an amount is to be determined "in the reasonable opinion of the Beneficiary" and the Lessee disagrees with the Beneficiary's determination of such amount, then the determination of such amount shall be made by a third party acceptable to both the Lessee and the Beneficiary; provided, however, that until such third party shall have made a determination, the Beneficiary's determination shall govern. In the event that the Beneficiary and the Lessee shall fail to agree upon any amount referred to in this paragraph and a third party is required to determine such amount, then the charges made by such third party for such determination shall be paid as follows: (1) If the amount determined by the third party is equal to or greater than the amount determined by the Beneficiary, then the Lessee shall pay the entire amount of such third party charges. (2) If the amount determined by the third party is less than the amount determined by the Beneficiary,

then the Beneficiary shall pay a portion of such charges determined by multiplying (a) the total amount of such charges by (b) a fraction (i) the numerator of which is the excess of the amount determined by the Beneficiary over the amount determined by the third party, and (ii) the denominator of which is the amount determined by the Beneficiary; the Lessee shall pay the difference.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to the greater of 10.15% or the Chemical Rate per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid and addressed as follows:

(a) if to the Lessor, at 15th Street and Pennsylvania Avenue N. W., Washington, D. C. 20013, Attention of Ronald Larson, Trust Officer, with a copy to the Beneficiary at the addresses provided in the Trust Agreement; and

(b) if to the Lessee or the Guarantor, at 111 West Jackson Boulevard, Chicago, Illinois 60604, Attention of Gerald F. Lahey, in the case of the Lessee or 90 Half Day Road, Lincolnshire, Illinois 60015, Attention of D. B. Romans, in the case of the Guarantor, or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Agent at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Department, Corporate Division, and to ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention of Contract Administration.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforce-



able such provision in any other jurisdiction.

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 22. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, covenants, undertakings and agreements by American Security and Trust Company, N.A., or for the purpose or with the intention of binding said trust company personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said trust company or the Beneficiary or on account of any representation, covenant, undertaking or agreement of the Lessor, either

express or implied, all such personal liability, if any, being expressly waived and released by the Lessee, it being further understood that no liability of the Lessor or any Beneficiary shall be imputed to the other said party.

SECTION 23. Further Assurances. The Lessee agrees that at any time and from time to time, after the execution and delivery of this Lease, it shall, upon request of the Lessor, execute and deliver such further documents and do such further acts and things as the Lessor may reasonably request in order fully to effect the purposes of this Lease, including, but not limited to, any and all information necessary to enable the Lessor properly to complete and file any and all state or political subdivision thereof income tax returns in connection herewith.

SECTION 24. Rights, Remedies and Powers. Each and every right, remedy and power granted to the Lessor hereunder shall not be exclusive but shall be cumulative and in addition to any other right, remedy or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute or otherwise and may be exercised by the Lessor from time to time concurrently or independently and as often and in such order as the Lessor may deem expedient. Any failure or delay on the part of the Lessor in exercising any such right, remedy or power, or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect the Lessor's right thereafter to exercise the same, and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power. In the event the Lessor shall have proceeded to enforce any such right, remedy or power and such proceeding shall have been determined adversely to the Lessor, then in such event the Lessee and the Lessor shall be restored to their former positions and the rights, remedies and powers of the Lessor shall continue as if no such proceeding had been taken.

SECTION 25. Patent Indemnity by the Lessee. The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Builder

because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee or the Guarantor and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee or the Guarantor and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

WCTU RAILWAY COMPANY,

by

\_\_\_\_\_  
Treasurer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

AMERICAN SECURITY AND TRUST COMPANY,  
N.A., as Trustee,

by

\_\_\_\_\_  
Vice President

[Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF LAKE, )

On this            day of            1976, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is Treasurer of WCTU RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission expires

DISTRICT OF COLUMBIA, ) ss.:

On this            day of            1976, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is Vice President of AMERICAN SECURITY AND TRUST COMPANY, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

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Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE A TO LEASE

<u>Type and AAR</u> <u>Mechanical</u> <u>Designation</u>	<u>Quantity</u>	<u>Lessee's</u> <u>Road Numbers</u> <u>(Both Inclusive)</u>
50' 7-1/4" 70-ton single sheath box car; AAR Mechanical Designation XM	250	WCTU 101250-101499

Annex D to  
Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 1, 1975 (hereinafter called this Assignment), by and between AMERICAN SECURITY AND TRUST COMPANY, N.A. (hereinafter called the Lessor or the Vendee), as Trustee under an Owner Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with CHEMICAL BANK and INTERNATIONAL PAPER LEASING COMPANY (hereinafter individually and collectively called the Beneficiary), and FIRST SECURITY BANK OF UTAH, N. A., a national banking association, not in its individual capacity but solely as Agent (hereinafter called the Vendor) under a Participation Agreement dated as of the date hereof.

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation) with PACCAR INC (hereinafter called the Builder) providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in Annex B thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and WCTU Railway Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Lessor has agreed to assign for security purposes certain of its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee,

all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (other than the payments owing the Lessor or the Beneficiaries pursuant to Sections 6, 7 [with respect to public liability insurance], 9 and 16 of the Lease [but in the case of rentals, only the amount of the increase therein], which payments shall be made directly to the Lessor or the Beneficiaries as the case may be) (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation (subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation), and to provide for the payments required to be made by the Vendor pursuant to the last paragraph of Paragraph 7 of the Participation Agreement, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the



Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby irrevocably constitute the Vendor the Lessor's true and lawful attorney, with full power (in the name of the Lessor, or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Vendor may deem to be necessary or advisable in the premises, all subject and limited to the rights, titles, interests, powers, privileges and other benefits under the Lease assigned hereunder.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Documentation and the Participation Agreement, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate,

right, title and interest of the Vendor in and to the Lease shall revert to the Lessor as Trustee under the Trust Agreement.

6. The Lessor will pay and discharge any and all liens, charges or security interests (other than those created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or the Beneficiary, or their successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units), which if unpaid, might become a lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's security interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the District of Columbia, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 21 of the Security Documenta-

tion, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as an event of default under the Security Documentation has not occurred and is not then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment and which are for the sole benefit of the Lessor, without the prior consent of the Lessor. Nothing in this Assignment shall be construed to prohibit the Vendee or the Beneficiaries from proceeding directly against the Lessee for payments due the Vendee or the Beneficiaries for indemnification pursuant to Sections 6, 9 and 16 of the Lease, proceeding directly against any insurer with respect to any public liability insurance maintained by the Lessee pursuant to Section 7 of the Lease or proceeding directly against the Lessee for specific performance of the Lessee's covenant to maintain the Units in the manner required by such Section 9; provided, however, that neither the Vendee nor the Beneficiaries may, without the prior written consent of the Vendor, take any such action which could affect a termination of the Lease.

12. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each of and all the representations, covenants, undertakings and agreements herein made on the part of the Lessor are made and intended not as personal representations, covenants, undertakings and agreements by American Security and Trust Company, N.A., or for the purpose or with the intention of binding said trust company personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement in the same manner and to the same extent set forth in Article 21 of the Security Documentation, and this Assignment is executed and delivered by said trust company not in its own right but solely in the exercise of the powers expressly conferred on it as trustee under the Trust Agreement; and except in the case of its own gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said trust company or the Beneficiary on account of this Assignment or on account of any representations, covenants, undertakings or agreements of the Lessor either expressed or implied, all such personal liability, if any, being expressly waived and released by

names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

AMERICAN SECURITY AND TRUST  
COMPANY, N.A., as Trustee,

by

\_\_\_\_\_  
Vice President and Trust Officer

[Seal]

Attest:

\_\_\_\_\_

FIRST SECURITY BANK OF UTAH, N. A.,  
Not in its individual capacity  
but solely as Agent,

by

\_\_\_\_\_  
Authorized Officer

[Sea]

Attest:

\_\_\_\_\_  
Authorized Officer

DISTRICT OF COLUMBIA, ) ss.:

On this            day of            1976, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of AMERICAN SECURITY AND TRUST COMPANY, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association and that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH, )  
 ) ss.:  
COUNTY OF SALT LAKE, )

On this                    day of                    1976, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N. A., that one of the seals affixed to the foregoing instrument is the seal of said association and that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Notary Public

[Notarial Seal]

My Commission expires

## LESSEE'S CONSENT AND AGREEMENT

The undersigned, WCTU RAILWAY COMPANY, an Oregon corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby acknowledges receipt of a copy of the Lease Assignment, consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (other than the payments owing to the Lessor or the Beneficiaries pursuant to Sections 6, 7 [with respect to public liability insurance], 9 and 16 of the Lease which shall be made directly to the Lessor or the Beneficiaries, as the case may be) (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly in immediately available funds to FIRST SECURITY BANK OF UTAH, N.A. (hereinafter called the Agent), the assignee named in the Lease Assignment, at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Department, Corporate Division (or at such other address as may be furnished in writing to the Lessee by the Agent);

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the Lessor;

(3) the Agent shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Agent, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Agent by signing the acceptance at the foot hereof, shall be deemed to be an agreement under the laws of the District of Columbia and, for all purposes, shall be construed in accordance with the laws of said jurisdiction.

WCTU RAILWAY COMPANY,

by

[Corporate Seal]

\_\_\_\_\_  
Treasurer

Attest:

\_\_\_\_\_  
Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the first day of December 1975.

FIRST SECURITY BANK OF UTAH,  
N.A., Not in its individual  
capacity but solely as Agent,

by

\_\_\_\_\_  
Authorized Officer



STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF LAKE, )

On this            day of            1976, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is Treasurer of WCTU RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission expires

Annex E to  
Conditional Sale Agreement

GUARANTY AGREEMENT

GUARANTY AGREEMENT dated as of December 1, 1975, between UNION TANK CAR COMPANY, a Delaware corporation (hereinafter called the Guarantor), and AMERICAN SECURITY AND TRUST COMPANY, N.A., a national banking association (hereinafter called the Lessor), as Trustee under an Owner Trust Agreement (hereinafter called the Trust Agreement dated as of the date hereof with Chemical Bank and International Paper Leasing Corporation (hereinafter called the Beneficiaries) entered into pursuant to a Participation Agreement dated as of December 1, 1975 (hereinafter called the Participation Agreement), among FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but solely as agent (hereinafter called the Agent), the Lessor, the Beneficiaries, WCTU Railway Company (hereinafter called the Lessee), a wholly owned subsidiary of the Guarantor, ITEL Leasing Corporation, the Guarantor and the investors referred to therein (hereinafter called the Investors).

WHEREAS the Lessor has entered into a Conditional Sale Agreement dated as of December 1, 1975 (hereinafter called the Security Documentation), with PACCAR INC (hereinafter called the Builder), providing for the sale to the Lessor of such units of railroad equipment (hereinafter called the Units) described in Annex B to the Security Documentation as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Builder has assigned its interests in the Security Documentation to the Agent, acting under the Participation Agreement, pursuant to an Agreement and Assignment dated as of December 1, 1975 (hereinafter called the Assignment);

WHEREAS the Lessor and the Lessee have entered into a Lease of Railroad Equipment dated as of December 1, 1975 (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units;

WHEREAS the Lessor has assigned the Lease to the Agent pursuant to an Assignment of Lease and Agreement dated as of December 1, 1975 (hereinafter called the Lease Assignment), by and between the Lessor and the Agent, and the Lessee has consented to the assignment of the Lease to the Agent by execution of the Lessee's Consent and Agreement dated as of December 1, 1975 (hereinafter called the Consent), and in connection with such Consent has agreed to pay to the Agent the Payments (as defined in the Consent); and

WHEREAS as an inducement to the Lessor to enter into the Lease with the Lessee and to lease the Units, or any of them, to the Lessee and as an inducement to the Beneficiaries to enter into the Trust Agreement and to the Investors to invest in the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) pursuant to which the Lessor is financing its purchase of the Units, the Guarantor has agreed to guarantee as hereinafter provided all obligations and covenants of the Lessee under the Participation Agreement, the Lease and the Consent;

NOW, THEREFORE, in consideration of the premises and the execution and delivery of the Lease and the Participation Agreement and of other good and valuable consideration and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Guarantor hereby unconditionally guarantees (i) to the Lessor the due and punctual payment by the Lessee of all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease due and to be due under the Lease and any renewals or extensions thereof or otherwise in respect of the Units thereunder, and the due and punctual performance of all obligations of the Lessee under the Lease, and (ii) to the Builder, as third party beneficiary, the due and punctual performance of the obligations of the Lessee to the Builder under the Participation Agreement; and, in the case of the failure by the Lessee duly and punctually to make the payments or to perform such obligations hereinabove referred to, the Guarantor hereby unconditionally agrees punctually to make such payments and to perform such obligations. Without limiting the generality of the foregoing, the Guarantor's obligations hereunder shall continue in full force and effect notwithstanding the insolvency, bankruptcy or other similar disability of the Lessee.

2. The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of the Participation Agreement, the Lease, the Consent or this Agreement or any conduct of the Lessee, the Agent and/or the Lessor which might constitute a legal or equitable discharge in whole or in part of a surety or guarantor and irrespective of any circumstances which might limit the recourse of the Agent, any Investor, the Lessor, the Beneficiaries or the Builder to the Lessee, including, but not limited to, modification, settlement, account stated compromised, forgiveness or forbearance. The Guarantor hereby waives diligence, presentment, demand for payment, notice of dishonor, protest and all notices of any kind. No waiver by the Lessor of any of its rights hereunder or under the Lease, the Participation Agreement or the Consent, and no action by the Lessor to enforce any of its rights hereunder or under the Lease, the Participation Agreement or the Consent, or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder. Guarantor further agrees that its Guaranty shall continue to be effective, or shall be reinstated as the case may be, if at any time payment or any other obligation guaranteed hereby is rescinded or must otherwise be restored by the Lessor upon the bankruptcy or reorganization or similar proceeding with respect to the Lessee.

3. The Guarantor hereby agrees that it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all its assets and will not consolidate with or merge into another corporation unless (i) the corporation formed by such consolidation or into which the Guarantor is merged or the person acquiring all or substantially all the assets of the Guarantor shall execute and deliver to the Lessor an agreement, in form and substance satisfactory to the Lessor containing an assumption by such successor of the due and punctual performance and observance of each covenant and agreement on the part of the Guarantor set forth in this Agreement, and (ii) immediately after giving effect to such transaction no Event of Default (as defined in the Lease), and no event which, after notice or lapse of time, or both, would constitute such an Event of Default, shall have occurred and be continuing.

4. The Guarantor hereby acknowledges that it has received copies of the Participation Agreement, the Lease,

the Conditional Sale Agreement, the Assignment, the Lease Assignment and the Consent and is fully aware of all the terms and conditions of each such agreement.

5. This is a guaranty of payment, not of collection, The Guarantor expressly waives any right to require that action be brought against the Lessee or to require that resort be had to any security.

6. The Guarantor unconditionally agrees that, whenever an attorney is required to enforce this agreement or to enforce, declare or adjudicate any rights or obligations under this Agreement whether by suit or by any other means whatsoever, all reasonable costs or fees of such attorney shall be payable by the Guarantor.

7. This Guaranty may not be amended, modified, terminated or revoked without the express written consent of the Lessor until all the obligations of the Lessor under the Security Documentation shall have been satisfied in full.

8. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals hereunder to be affixed and duly attested, as of the date first above written.

UNION TANK CAR COMPANY,

by

[Corporate Seal]

\_\_\_\_\_  
Treasurer

Attest:

\_\_\_\_\_  
Assistant Secretary

AMERICAN SECURITY AND TRUST  
COMPANY, N.A., as Trustee,

by

Vice President

[Seal]

Attest:

Secretary

STATE OF ILLINOIS, )  
 ) ss,:  
COUNTY OF COOK, )

On this            day of            1976, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is the Treasurer of UNION TANK CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission expires

DISTRICT OF COLUMBIA, ) ss.:

On this            day of            1976, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of AMERICAN SECURITY AND TRUST COMPANY, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association and that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

---

Notary Public

[Notarial Seal]

My Commission expires



## ASSIGNMENT OF GUARANTY AGREEMENT

UNION TANK CAR COMPANY and AMERICAN SECURITY AND TRUST COMPANY, N.A., respectively referred to as the Guarantor and the Lessor (and hereinafter respectively so-called) in the foregoing Guaranty Agreement (hereinafter called the Guaranty), hereby agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Agent (as defined in the Guaranty), all the Lessor's right, title and interest, powers, privileges and other benefits under the Guaranty, including, without limitation, the right to receive all payments to be made by the Guarantor thereunder (other than the payments owing the Lessor or the Beneficiaries [as defined in the Guaranty] pursuant to Sections 6, 7 [with respect to public liability insurance], 9 and 16 of the Lease [as defined in the Guaranty]) and to enforce the obligations and covenants of the Guarantor under the Guaranty.

2. The Guarantor hereby consents to all the terms and provisions of this Assignment. The Guarantor agrees that all payments by it due or to become due so long as this Assignment is in effect shall be made in immediately available funds directly to the Agent at 79 South Main Street, Salt Lake City, Utah 84111, attention of Trust Department, Corporate Division (or at such other address as may be furnished in writing to the Guarantor by the Agent), not later than 11:00 a.m. local time at the place due.

3. The Agent, by its acceptance at the foot hereof, agrees that it will apply any payments received by it from the Guarantor pursuant to this Assignment to satisfy the obligations of the Lessor under the Security Documentation (as defined in the Guaranty), subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation, and to provide for the payments required to be made by the Lessor pursuant to the last paragraph of Paragraph 7 of the Participation Agreement (as defined in the Guaranty). Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Documentation and the Participation Agreement, the Guaranty shall be reassigned to the Lessor and the Lessor shall have all rights thereunder and pursuant thereto.

4. The Guarantor and the Lessor agree that the

Guaranty will not be amended, modified, terminated or revoked without the express written consent of the Agent until all the obligations of the Lessor under the Security Documentation shall have been satisfied in full.

5. This Assignment shall in all respects be governed by and construed in accordance with the laws of the State of Illinois.

UNION TANK CAR COMPANY,

by

[Corporate Seal]

\_\_\_\_\_  
Treasurer

Attest:

\_\_\_\_\_  
Assistant Secretary

AMERICAN SECURITY AND TRUST  
COMPANY, N.A., as Trustee,

by

[Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Secretary

The foregoing Assignment and Guaranty Agreement is hereby accepted, as of the first day of December 1975.

FIRST SECURITY BANK OF UTAH,  
N.A., Not in its individual  
capacity but solely as Agent,

by

\_\_\_\_\_  
Authorized Officer

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of            1976, before me  
personally appeared            , to me  
personally known, who, being by me duly sworn, says that he  
is the Treasurer of UNION TANK CAR COMPANY, that one of the  
seals affixed to the foregoing instrument is the corporate  
seal of said corporation and that said instrument was signed  
and sealed on behalf of said corporation by authority of its  
Board of Directors and he acknowledged that the execution of  
the foregoing instrument was the free act and deed of said  
corporation.

---

Notary Public

[Notarial Seal]

My Commission expires:

DISTRICT OF COLUMBIA, ) ss.:

On this            day of            1976, before me  
personally appeared            , to me  
personally known, who, being by me duly sworn, says that he  
is a Vice President of AMERICAN SECURITY AND TRUST COMPANY,  
N.A., that one of the seals affixed to the foregoing instru-  
ment is the seal of said association and that said instrument  
was signed and sealed on behalf of said association by  
authority of its Board of Directors and he acknowledged that  
the execution of the foregoing instrument was the free act  
and deed of said association.

---

Notary Public

[Notarial Seal]

My Commission expires: